1949.

File No. O.Cr.P.C./49

Legal Deptt

A BRANCH

Subject:— Opinions under the Code of Criminal Procedure

P.113/C

File No. O. Cr. P.C./49

Gen. 194

34-A

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Bale.M.S.

18/6

Office of the R. L. A.

The prosecution is launched under sections 182 and 500, Indian Penal Code, and though the offence under section 500, Indian Penal Code, is compoundable, that under sectio 182 is not compoundable. If Home Department considers that leniency be shown to the accused, the Public Prosecutor may be asked to withdraw the prosecution for the offence under section 182, Indian Penal Code, in accordance with the provisions of section 494, Criminal Procedure Code. The case under section 500 may be compounded on the terms suggested regarding expression of regret and costs.

Id/-

S/1

Remembrancer of Legal Affairs.

U.R. to H.D. No. 481, dated the 14th Jan.1949.

PROSECUTION.

Undeli, Mr. Fakirappa Basappa formerly Sub-Divisional Police Officer, Northern Division.

GOVERNMENT OF BOMBAY.

Home Department.

Order No.4889/5-A.

Bombay Castle, January 1949.

Whereas in the year 1947 Mr.Fakirappa Basappa Undeli held the office of Sub-Divisional Police Officer, Northern Division, Dharwar;

And whereas on or about the 17th November 1947 the said Mr. Fakirappa Basappa Undeli, while acting or purporting to act in the discharge of his official duties is alleged to hve intentionally aided Mr. S.S. Thakur, then Police Sub-Inspector, Navalgund in secreting two original documents, to wit, a first information report and a Panchnama with the intention of preventing the same from being produced or used as evidence in Court in a case against one Shankergouda and others of the village of Shelwadi for an offence under section 307 of the Indian Penal Code;

And whereas the said Mr. Fakirappa Basappa Undeli while so acting or purporting to act is further alleged to have intentionally aided the said Mr. S.S. Thakur in fabricating an incorrect first information report and an incorrect panchanama and substituting the same in place of the original genuine documents with intent thereby to save, or knowing it that he is likely thereby to save the said Shankergouda from legal punishment;

And whereas it appears to the Governor of Bombay that the said Mr. Fakirappa Basappa Undeli has thereby committed the offences punishable under section 109

read with sections 193, 204, 218, 466 and 471 of the Indian Penal Code (XLV of 1860).

Now, therefore, in exercise of the powers conferred upon him by sub-sections (1) and (2) of section 197 of the Code of Criminal Procedure, 1898 (V of 1898), the Governor of Bombay is pleased (a) to grant sanction to the prosecution of the said Mr. Fakirappa Basappa Undeli for the said offences, and (b) to direct that the trial of the said Mr. Fakirappa Basappa Undeli should be held before the court of the District Magistrate, Dharwar.

By order of the Governor of Bombay,

Secretary to the Government of Bombay,
Home Department.

To

The Commissioner, Southern Division,

The Inspector General of Police, Province of Bombay (by letter),

The District Magistrate, Dharwar,

The Accountant General, Bombay,

The Additional Assistant to the Inspector General of Police, Anti-Corruption Branch,

The Private Secretary to the Governor,

The Finance Department.

I consider it inadvisable for Government to take any action against the two Police Officers until the main case against Shankergouda and others is finally decided. The accused in that case will most certainly rely upon the First Information Report and the Panchnama which are alleged to have been fabricated by the two Police Officer and to prosecute the latter on that charge at this stage would be tantamount to prejudging the issue in the main case and to invite a just complaint from the accused that Government are prejudicing their defence and fair trial. Since the Court of the Committing Magistrate has already taken cognizance of the case, the question whether the investigating officers have or have not fabricated any evidence is sub-judice. If, from the evidence before it, the Court gives a finding that the two officers were concerned in fabricating false evidence with the intention of saving the accused, Government will be on much surer grounds in ordering their prosecution. Besides, the offence of section 193 of the Indian Penal Code under which the Police Officers are charged would require, under section 195(1) (b) of the Code of Criminal Procedure, a complaint in writing of the Court concerned viz. the Court trying the accused in the principal case. Before the Court can make such complaint, the Court must be satisfied from the evidence before it that the particular offence was committed in or in relation to any proceedings before it. It is therefore all the more imperative that any action contemplated against these officers should be deferred till the final disposal of the main case.

M/-

28/1

Remembrancer of Legal Affairs.

U.R. to H.D., No. 64-Confl., dated the 28th January 1949.

Office of the R. L. A.

Section 12(1) of the Code of Criminal Procedure provides for appointment of persons as magistrates, whereas section 41, which occurs in the sub-heading "D. Conferment, continuance and cancellation of powers", must naturally be confined to the withdrawals of powers as distinguished from the supersession of the appointment itself. Inasmuch as the notification No. S.46/2/69 dated the 3rd July 1948 has been superseded by notification No. S.46/2/69 dated the 13th November 1948, it would follow that the appointment of the persons mentioned in the latter notification is in the place of the appointments made by the former notification, which must to that extent be deemed to have been superseded, i.e., cancelled. The view taken by the District Magistrate is, therefore, correct; and, if it is intended to continue the appointments of the persons mentioned in the first notification, the appointments would have to be notified under section 12.

Id/-
1/2/49.
Remembrancer of Legal Affairs.

U.R. to M.D. No. 1214 dated the 1st February 49.

Submitted.

N.D. has issued a circular No. 592/5 dated the 18th June 1946 directing that when District Magistrates take cognizance of complaints against Government servants they should consider the desirability of referring all cases in which a prima facie case appears to have been established to the police for investigation and report under section 155(2) of the Crim. P.C. D.S.P. Ahmedabad states that the section quoted in the Circular should be section 202 and not section 155(2). The P.P., Ahmedabad, the D.M. and the Commr. N.D. agree with this view. H.D. also agrees with this view bu in view of the fact that the High Courts have deprecated reference to police for investigating complaints where the accused person is a police officer H.D. wants to know whether it would be advisable t cancel the circular instead of amending it. That Department also requests that the papers may be returned through P. & S.D.

2. In re Jankidas, 12 Bom. 161 it is laid down that section 155 of the Code of Criminal Procedure is conversant only with the powers of police officers, but it confers no power or authority on Magistrates to direct a local investigation by the Police or to call for a Police report; Magistrates can do so only under section 202 after taking cognizance of the case. But this view is quite unintelligible and renders sub-section (2) of section 155 meaningless. In Emp. v. Vishwanath, 8 Bom. L.R. 589 it has been correctly held that a Magistrate has jurisdiction under sub-section (2) of this section to refer a matter to the police fo

investigation and report, even wihout a complaint, and without examining the complainant. So also, in re Amdulla 6 M.L.T. 259, ~~cited~~ 4 I.C. 1043 the Magistrate was held competent to order investigation without first taking congnizance of the offence under section 190 (see Mitra's Criminal Procedure Code 10th Edn p.468). It appears that even under section 155(2) the District Magistrate can refer cases of Government servants to the police for investigation and report. But section 202 will apply to cases where a Magistrate takes cognizance of an offence on a complaint under section 190(1)(a) and not otherwise. Since the circular refers to complaints cognizance of which is taken by the District Magistrate reference should be made to section 202 and not to section 155(2). It is true that High Courts have held that if the accused is himself a police officer it is not proper that the Magistrate should call for a report from the police officer but that the Magistrate himself should hold the inquiry or direct a local inquiry by a subordinate magistrate (Ibid p.719) The Circular refers to complaints against Government servants in general and not merely against police officers. It is not therefore necessary to cancel the notifn but the same may be amended suitably so that in the case of complaints against Police Officers the District ~~Magnt~~ Magistrate himself may hold the inquiry or direct his subordinate to hold the same.

Id/- P.S. Nadkarni.
22/1.

~~XXXX~~
A.L.R. Reply may be in terms of para. 2 of Mr. N's note.
Id/-
24/1.

R.L.A. It is my impression that the Circular was issued when offences of this kind were non-cognizable and hence fell under 155(2). It was then necessary to say that the Magistrate should hold the inquiry himself. I believe that they are now cognisable. Is there any necessity for amendment?
Id/-
26/4.

Office of the R.L.A.

In the absence of the original papers underlying Government Circular No.392/5 dated the 18th June 1946, it is difficult to dugs the circumstances to meet which that circular was issued. If it was issued only with reference to offences of corruptio by Government servants which were at that time non-cognizable, the reference to section 155(2) would appear to be quite proper. Such offences have now been made cognizable with the result that there could be very little scope in practice for private parties to file complaints before the District Magistrates. The offences would ordinarily be investigated by the police, and a charge-sheet would be submitted under the provisions of section 190(1) (b) so that there would be no scope for any further police investigation either with reference to section 155(2) or under section 202(1).

2. If, however, the circular was intended to apply to complaints of any offence against Government servants, the proper reference should be to section 202(1) and not to section 155(2).

Sd/-.

2/2

Remembrancer of Legal Affairs.

U.R. to H.D. No. 1256, dated the 2nd February 1949.

Office of the R.-L. A.

Compensation for wrongful arrest etc.

Criminal Procedure Code, 1898.
sections 250 and 516AA

Indian Penal Code, 1860.
section 211.

The Magistrate's grievance seems to be that the Criminal Procedure Code does not empower him to award a sentence of imprisonment to a complainant who has brought about a wrongful arrest of another person. He has overlooked the provisions of section 211 of the Indian Penal Code. Had he been convinced that the proceedings before him were instituted by the complainant with the intent to cause injury to the accused, it was open to him to act under section 195 of the Code of Criminal Procedure and to make a complaint against the complainant for the offence under section 211 of the I.P.C. Having regard to the principles of Criminal jurisprudence it would not be fair to empower a Magistrate to award imprisonment to a complainant straightway without giving him the benefit of an independent trial.

2. The Magistrate could have also awarded compensation or substantial costs to the accused under the provisions of sections 250 and 516AA of the Criminal Procedure Code.

3. The remedies under the existing law should have thus been availed of by the Magistrate. They would normally prove adequate.

4. This may be brought to the notice of the Magistrate through the High Court.

Sd/-
1/2
Remembrancer of Legal Affairs.

U.R. to H.D. No., 1240, dated the 2nd February 19

R.I. No. 1318 dated 28.1.1949.

Submitted.

Please see Commr. N.D's letter on p.1 ante. It appears that Mr. D.K. Dave, Special Magistrate appointed for the trial of cloth cases at Ahmedabad has been transferred and by his order No. EST 1171, dated 4.10.4 Mr. A.B. Desai Resident Magistrate, Ahmedabad for trial of Textile Cases (vice Mr. M.K. Bhandhare transferred) The Commr. requests Govt. to empower Mr. Desai under sec. 3 of the Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle Contr (Enhancement of Penalties) Act, 1947. U.S. H.D. states that this case is not on all fours with that in R.L.A's opinion No. 9733, dated 18. 10.1948 and since Mr. Desai has already been invested with powers to pass sentences provided in sec. 2 of the Bom. Essential Supplies (T.P. and the E.C. and C.C. (E.P.) Ordinance, 1947, he would continue to exercise the powers even after his transfer from Broach to Ahmedabad and it is not necessary to invest him again with the powers unders ec. 3 of the A as recommended by the Commr. The R.L.A. is requested to advise in the matter.

2. By H.D. notfn. No. 6171/5, dated November 1947, Mr. Desai was empowered to pass sentences provided in sec. 2 of the Bombay Essential Supplies (Temporary Powers) and Essential Commodities and Cattle (Control) (Enhancement of Penalties) Ordinance, 1947 in excess of his powers under sec. 32 of the Code of Criminal Procedure, 1898. By G.R. H.D. No. 4529/5, dated 22.9.48 a temporary post of Special Magistrate at Ahmedabad was created to try textile cases, the duration of the post being for a period of six months or until the cases are disposed, whichever is earlier. By Order No. EST 1171, dated 4.10.1948 Mr. Desai who was a Resident Magistrate

at Jambusar is appointed as Special Magistrate, Ahmedabad for trial of Textile Cases vice Mr. Dhamdhere transferred. But since by notification No. 3171/5, dated November 1947 Mr. Desai was empowered by a notfn. to pass enhanced sentences provided in sec. 2 of the Ordinance it is not necessary to empower him again with this power by a notification under sec. 3 of the Bom. Essential Supplies (T.P.) and Essential Commodities and Cattle (Control) Enhancement of Penalties Act, 1947 (pl. see sec. 25 of the Bom. General Caluses Act, 1904) and he can exercise these powers although he is transferred from Jambusar to Ahmedabad. R.L.A's Opinion No. 9723, dated 18.10.1948 is not applicable in this case. The view taken by the US. H.D. at pp. 6-7 ante appears to be correct.

M/- P.S. Madkarni.
5/2.

A.L.R. I agree. Reply may be ; A - A
B - B.

M/-
7/2.

R.L.A. M/-
7/2.

U.R. to H.D. No. 1507 dated 6-2-1949.

Office of the R. L. A.

Prosecution for making false statement.

Indian Penal Code, 1860. Sec.182 and Criminal Procedure Code, 1898. Sec.195(1)(a).

The Presumption of the Finance Department that the Commissioner of Police can start the prosecution proceedings under section 182, Indian Penal Code, without a specific sanction of this Government for launching the prosecution proceedings is correct. It must however be pointe out that there must be a complaint in writing of the public servant concerned -- the Secretary to the Government of India, Ministry of Finance, to whom the letters along with the affidavits were addressed ---- as required by section 195(1)(a) of the Criminal Procedure Code.

Sd/-

4/3

Remembrancer of Legal Affairs.

U.R. to F.D., No. 141-Confl., dated the 4th March 1949.

L.D.R.I.No. 1746 dt. 5-2-49.

Submitted.

The Collr. and the District Magistrate, Dangs desires that a case pending on his file against Mr. N.V. Keshkamat should be transferred to any other Magistrate as he had himself sanctioned the prosecution. The Commr. suggests that the case may be transferred to the Court of Resident Magistrate, Bulsar or any other First Class Magistrate in Surat District and the papers are accordingly submitted to Govt.

2. The Home Department considers that secs.178 or 527 of the Criminal Procedure Code will have no application to the present case and that the case can only be transferred by the High Court acting under sec. 526 of the Cr. P. C. The R.L.A. is, however, requested to advise before the High Court is addressed in the matter.

3. The view taken by the H.D. is correct. It appears from the papers that the charge-sheet has been sent up to the D.M. and in the circumstances that Magistrate can be said to have taken cognizance of the case. This being the position the High Court alone would be entitled to transfer the case to another Magistrate (cf. R.L.A. 's opinion No. C.Cr. P.C. 2/29 dt. 6-2-1929).

Id/-
8/2.

A.L.R. Reply may be:-
Seen and returned.
The view taken by H.D. is correct.

Id/-
8/2.

R.L.A. Id/-
8/2.

U.R. to H.D. No. 1583 dated 10-2-49.

R.L. No. 1615 - A
2/2/49.

Office of the R. L. A.

I have vainly looked into the legislative history of Act No. XVIII of 1923 by which sub-section (2A) was introduced in section 337. There is nothing to show, as the letter from the Government of India says, that this sub-section was originally inserted because it was apprehended that the lower Courts would not be competent to weigh satisfactorily the value of the evidence tendered by approvers in the serious types of offences covered by section 337. That may be one reason. Perhaps another reason may be that it was apprehended that an accused may not get a very fair trial in these inferior courts if the Magistrate who granted the pardon and in that process looked into the police record of the approver's statement were himself to try the case. Corruption among Government servants has to be stamped out. However, they must be assured a reasonable prospect of a fair trial, particularly since the offence is now made cognizable and special rules of presumptive evidence are also enacted. If, However, it is felt that empowering the lower magistracy - and many Resident Magistrates in this Province are inexperienced persons - would not prejudice a fair trial, there should be no objection to the amendment proposed by the Government of India. Otherwise I would suggest that the amendment should take the form of enabling Government to give the power of tendering pardon to certain Magistrates specially empowered in this behalf who could then be experienced Magistrates put in charge of anti-corruption cases.

Id/-
1/3

U.R. to H.D. No. 3440 d/-. 2/3/1949. Remembrancer of Legal Affairs.

Office of the R. L. A.

Criminal Procedure Code.

Transfer of case from Courts of the Second Class Magistrate at Baglan, Nasik.

When the accused sold that property to the man at Satana, the accused must have possessed or retained that property at Satana (before its sale) knowing that it was stolen property. The Magistrate can try the accused under section 380 or alternatively under section 411, Indian Penal Code; vide section 181(3) of the Code of Criminal Procedure, and it is not necessary to get the case transferred. As the accused is in jail, the Magistrate may be asked to expedite the trial.

Sd/-
14/10
Remembrancer of Legal Affairs.

U.R. to H.D., No. 2945, dated the 16th March 1949.

Office of the R. L. A.

The evidence in the case was crefully scrutinised and the opinion was expressed that a prima facie case justifying the surrender had not been made out. It may be pointed out that the Resident First Class Magistrate, Dhanduka before whom the evidence was recorded also r-eached the same conclusion and that the District Magistrate, Ahmedabad endorsed t that conclusion. By a prima facie case is meant a case which if unrebutted, would warrant the conviction of the accused. The Saurashtra Government themselves agree that such case must be established in order to justify a srrrender. As in the opinion of the judicial Officers and the Law Officers of this Government such case was not made out upon the evidence on record, the Saurashtra Government may be informed that this Government regrets that there is no scope for reconsideration.

Id/-
28/6
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 7148, dated the
28th June 1---.

Office of the R.L.A.

Section 45(1)(f) of the Code of Criminal Procedure requires every village-headman, village-accountant, village-watchman, village police-officer, owner or occupier of land, and the agent of any such owner or occupier in charge of the management of that land, and every officer employed in the collection of revenue or rent of land on the part of the Crown or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police-station whichever is the nearer, any information which h may possess respecting any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Provincial Government, has directed him to communicate information. It will thus b noticed that the duty is cast upon a certain class of persons and not upon every person. For example, the great bulk of landless labourers or persons who do not own or occupy lands - and it is precisely from this class that criminals generally get support - is excluded from the pruview of this section. Secondly, an order must be issued by the District Magistrate with the sanction of the Provincial Government, and the direction must be to communicate information respecting particular matters the categories of which are clearly specified in clause (f). It would not be feasible to issue a direction under this clause requiring even the limited class of persons described above to supply information about all guests and strangers; for, in the event of prosecution under section 176, no Court would ever countenance the idea that the arrival of every stranger

in the village is a matter likely to affect the maintenance of order or the prevention of crimes or the safety of person or property. In my opinion, therefore, a general order of the kind contemplated would be ultra vires and would not be enforceable.

Sd/-
25/3
Remembrancer of Legal Affairs.

U.R. to H.D. No. 3291, dated the 26th March 1949.

Office of the R.L.A.

In accordance with the provisions of section 177 of the Code of Criminal Procedure the offence of bigam-y as also the offence of its abetment could be inquired into and tried by the Court in Ahmednagar District within the local limits of whose jurisdiction it was committed and not by the Court of the Presidency Magistrate at Bombay. See 30 Bombay Law Reporter p. 887 (Emperor v. Goverdhan Ridharan). Section 179 of the Code would not be atracted to this case. That section applies where the offender is being tried for the offence as a result of both an act and its consequence; that is, where the act deems and the consequence; following that act enter into the definition of the offence the commission of which is complained against. The adulterous intercourse in Bombay may, in a sense, be a consequence of the bigamous marrige in Ahmednagar District; but the consequence of adultery does not enter as an element into and form par-t of the offence of bigamy which was complete by itself in Ahmednagar District. See In re. Jeevandas 55 Bombay 59. In that aspect the case is the converse of Emperor v. Mohanlal Aditram, 30 Bombay Law Reporter p.1253, where a girl was kidnapped from Bombay, and the accused abetted a rape upon here at Ahmedabad; and it was held that he could not be tried in Bombay for such abetment. Section 180 of the Code has also no application; because, the offence of bigamy which is complete by itself is not an offence by reason of its relation to the adulterous intercourse which followed. The

view taken in the Home Department note is, therefore, correct.

Id/-

28/3.

Remembrancer of Legal Affairs

U.R. to H.D. No. 5576, dated the 29th March 1949.

Office of the R. L. A.

The accused in this case was acquitted mainly on the strength of the evidence given by Lt.Jahaffer Abdul Murad of the Royal Pakistan Navy, then a Naval Liason Officer at Bombay, who testified that the knife in question formed part of the accused's equipment and was issued to him by the Royal Pakistan Navy, and that his orders were to carry it whilst on duty. Lt.Murad further deposed that he did not order any leave to the accused who was still on duty. From the cross-examination it appears that it was suggested to him that he had tole the police officer that the knife was not part of the service equipment. However that may be, the Magistrate saw no reason to disbelieve Lt.Murad and accepting his testimony held that the knife was part of the service equipment. The notification issued by the Commissioner of Police exempted a person in the service or employment of the Crown required by his superiors or by the nature of his duties to carry weapons. Although the accused may be a member of the Royal Pakistan Navy, he would still be a person in the service or employment of the Crown, and the Magistrate, therefore, acted rightly in giving him the benefit of the exemption on the basis of Lt. Murad's evidence.

2. It transpires from the letter written by the Government of India that this knife is not a standard naval pattern knife and could not be part of the equipment. The letter, however, points out that there is an agreement whereby armed personnel of one Dominion are forbidden to enter the Dominion of the other. If that be so, the above facts may be brought to the notice of the Government of India for whose

information we might forward the copies of the proceedings herewith enclosed, and they may be requested to take up the matter with the Government of Pakistan.

3. The judgment was pronounced on the 20th of August 1948. The six months' period having elapsed, it will be not be feasible to take any action by way of appeal against the acquittal.

Sd/-
10/4
Remembrancer of Legal Affairs.

U.R. to H.D. No. 4168, dated the 16th April 1949.

Office of the R.L.A.

No sanction under section 197 of the Code of Criminal Procedure is necessary in respect of an offence under section 409 of Indian Penal Code inasmuch as such offence cannot be said to have been committed while acting or purporting to act in the discharge of his official duty.

Sd/-
22/5
Remembrancer of Legal Affairs.

U.O. to H. & L.G.D. No. 888-Confl. dated the 30th May 1949.

Office of the R. L. A.

The question raised for the R.L.A's consideration is whether the accused persons, who are alleged to have committed offences under sections 400 and 401 of the Indian Penal Code, can be tried together at the same trial.

2. The offence under section 400 is that of belonging to a gang of persons associated for the purpose of habitually committing dacoity, whereas the offence under section 401 is that of belonging to any wandering or other gang of perons associated for the purpose of committing theft or robbery and not being a gang of thugs or dacoits. Although in a sense the offence under section 400 is an aggravated variety of the offence under section 401, the underlined words show that the offences are treated as mutually exclusive. There is a very good reason for so treating them in that it is only thefts and robberies which do not form part of dacoities that would seem relevant under section 401. It would, therefore, seem that even if the same gang entertained both the purposes, two distinct and unconnected offences would thereby be committed. The ordinary rule is that contained in section 233 of the Code of Criminal Procedure Code that for every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately. The exceptions to this rule do not seem applicable to this case. The only exceptions under which it is sought to bring the case is contained in section 239(d), namely, the joinder of trial of persons accused of committing

different offences in the course of the same transaction. The expression "same transaction" is from its very nature incapable of exact definition and has been advisedly used because it had this quality. However, having regard to the considerations mentioned above, it would be difficult to hold that merely because the gang had two purposes in common, therefore, the two distinct offences, each dependent upon one purpose, were also committed in the course of the same transaction and could be tried together. The prejudice to the accused by adducing evidence which would be relevant to each offence has also to be taken into account.

3. On the whole it would be safer to follow the normal rule of separate trials. It is of interest to observe that in the case of Public Prosecutor v. Bonigiri Pottigadu (I.L.R. 32(Madras) 179) the Sessions Judge who had made a reference to the High Court has stayed the trial for the offence under section 401, because, he felt that a joint trial for both the offences under sections 400 and 401 would be [illegible]

Id/-

Secretary of Legal Affairs.

Office of the R. L. A.

The questions for the R.L.A's. consideration are:-

(1) Whether G.R.H.D. No. 7268/5, dated 21st February 1949, under which the sentence of transportation for life passed upon Gangawa was commuted to two years can now be amended in virtue of section 21st of the General Clauses Act, 1897, so as to alter the sentence from two years to three years and four months;

(2) Whether the order remitting the unexpired portion of the commuted sentence of two years, which was not communicated to the female convict for her acceptance, could now be issued in the amended form.

2. Government orders contained in Government letter, Home Department, No. 179/5-II-G dated 30th July 1947 presumably prescribe scales of remission only in respect of persons who were prisoners on or before the Independence Day i.e. 15th August 1947. It is difficult to understand how this femaleconvict, whocame to be sentenced a month after the 15th August 1947, has been held eligible for the benefit of this remission. Moreover, the remission cannot be calculated on the basis of a sentence of transportation for life as seems to have been done by the Superintendent. On the assumption the orders contained in G.L.H.D. No. 179/5-II-G dated 30th July 1947 apply to this female convict, she would at the most be entitled to the remission calculated on the basis of a sentence of two years' imprisonment. For, by the orders of commutation contained in G.R.H.D. No. 7268/5 dated 21st February 1949, sentence of two years' imprisonment has only been substitute for a sentence of transportation for life. The remissions, which this prisoner should get, are :-

(1) Ordinary remission under rule 758 or 764 of the Jail Manual calculated on the basi of the terms of imprisonment already undergone by her.

(2) One month's remission granted under G.L.H.D. No. 5428/5-C dated 5th August 1948 which is itself granted under the provisions of section 401; and

(3) if the orders be applicable, the remission granted under G.L.H.D. No. 173/5-II-C dated 30th July 1947 calculated on the basis of a sentence of two years rigorous imprisonment and not of ransportation for life.

In my opinion the convict is not entitled to this last remission for reasons already stated above. Making due allowance for the other two remissions and the term of imprisonment already undergone by her, the convict would have only 0 - 0- 11 left out of the sentence of two years rigorous imprisonment. This calculation may, if necessary, be got verified from the Superintendent.

Y	M	D		Y	M	D
1-	5-	18	actual imprisonment as reported by Supdt. on 28/2/49.			
	2-	8	From the above date till today i.e. 3.5.49.			
	-	2- 21	Remission earned by convict as reported by Supdt. till xxxx i.e. 28.2.48.			
	-	0- 10	Remission due under r.758from 28.2.48 till today.			
	-	0- 8	Remission due under r.764 for the quarter ending on 16.3.49.			
	-	1- 0	Crown Remission under G.L.			

5. Question No. (1).- Once a sentence is commuted under the provisions of section 402(1) of the Code of Criminal Procedure it would not be legally feasible to modify the order and to enhance the commuted period. The section contemplates the commutation of any of the sentences therein described for any other mentioned after it. In this case transportation has been commuted to rigorous imprisonment for a particular term. Commutation strictly means changing the nature of punishment; and once that change is brought out, it would not be legally permissible to modify that change to the disadvantage of the prisoner excepting of course on the grounds of fraud or mistake. The

1-11-19 H.D.No. 5428/5-C dated 5-8-48.
- 0-11 Unexpired portion of sentence.

- 0- 0-

The provisions of section 21 of the General Clauses Act, 1897, cannot be invoked for the purpose of making any modifications; for, to take the extreme case which is on the same legal footing it cannot possibly be argued that changed a sentence of death into one of transportation, it would be feasible for Government to cancel that order and restore the sentence of death again. The effect of the order of commutation is to substitute a sentence for one already passed, and such substitution is unconditional. It would be possible to remit under section 401 a portion of the sentence so substituted and thus in effect to reduce it; but it would be opposed to justice to enhance it or make it more stringent in character. The principle laid down in the case of Venkatesh Yeshwant Deshpande v. Crown (I.L.R. Nagpur 1940 p-1) that, the powers given by section 21 of the General Clauses Act are subject in any particular case to the special legislation applicable to that case, and that, having regard to the general sense and the purpose of the special legislation it would not be feasible to invoke the aid of section 21 of the General Clauses Act, would be equally applicable to section 402 as to section 401.

In my opinion, therefore, it would not be legal now to enhance the commuted period of two years.

4. Question No. (2).- In this view of the law, the proper course to follow in this case would be to remit the remaining term as calculated in the margin on page 31 ante upon the conditions described at p 25. But since only about 11 days now remain out of the unexpired portion, it would not be practicable, to give effect to the conditional remission in G.R.H.D. No. 7268/5 dated 21st February 1949,. That part of the

G.R. should therefore be cancelled; and it is competent to Government to do so.

Sd/-

4/5

Remembrancer of Legal Affairs

U.R. to H.D. No. 4920, dated the 5th May, 1949.

Office of the R.L.A.

Government's liability in respect of Muddamal stolen while in custody of the Court.

Government would not be liable to restore the property or its price to the petitioner (vide R.L.A's opinion No. 3874, dated 12.8.1947, and R.L.A's opinion No. ~~xxxx~~ 0.129, dated 9.2.1949.) It is a matter for consideration whether compensation should be granted ex-gratia on grounds of equity.

Sd/-

A/S

Remembrancer of Legal Affairs.

U.R. to H.D. No. 4925, dated the 5th May, 1949.

Office of the R.L.A.

Action under section 144 of the Code of Criminal Procedure or under section 186 of the Bombay Municipal Boroughs Act would not be legally feasible in this case. It is, however, possible to take preventive action under the rules framed under clause (a) of sub-section (1) of section 6 of the Factories Act, 1948 or under the provisions of the Bombay Building (Control of Erection) Act, 1948 if it is extended to Surat.

Id/-
7/5
Remembrancer of Legal Affairs.

U.R. to H.D., No. 5035, dated the 7th May 1949.

No. 5819
Office of the R.L.A.
Bombay Castle, 13th May 1949.

From

P.M. Lad, Esquire, I.C.S.
Remembrancer of Legal Affairs, Bombay.

To

The Government Pleader, High Court, Bombay.

Subject:- Criminal References Nos. 36 & 37 of 1949 --- from Banas Kantha.

Sir,

In reply to your letter No. 2353 dated the 10th May 1949, I am directed to state as follows :

I am given to understand that the Ordinance was to be in force for a limited duration and that duration was being extended from time to time. Unless the Ordinance ceased to be in force by efflux of time, it would continue to be the law as it has not been expressly repealed under paragraph 5 of the Indian States (Application of Laws) Order, 1948. Even if it ceased to be in force, cases arising under it would still be triable as expressly provided by section 16 thereof. The District Magistrate has not quoted the authority under which he purported to make the transfer. He could not do so under the Code of Criminal Procedure inasmuch as the offences were made expressly triable by a Special Tribunal. There is no other authority under which he could direct the transfer. The view taken by you is therefore substantially correct. It must, however, be made clear to the Court that, although the reference may be accepted, the proceedings should not be quashed. The proceedings have already commenced before the Tribunal and after making further enquiries in the matter Government would like to consider whether these and similar other proceedings, if any, should be continued before any other Tribunal by

making separate legislative provision therefor by an order issued under the Extra Provincial Jurisdiction Act, 1947.

Yours faithfully,

Id/-

Remembrancer of Legal Affairs.

Office of the R.L.A.

On principle it would be wrong to allow the petitioner to engage a private pleader to conduct the prosecution (superseding the Police Prosecutor who is now conducting this prosecution) when the allegations made against that officer are found baseless. However it is for the trial magistrate to decide this question under section 495 of the Criminal Procedure Code, and the petitioner may be informed accordingly.

Sd/-
20/6
Remembrancer of Legal Affairs.

U.R. to M.D. No. 6843, dated the 21st June 1949.

Office of the Remembrancer of Legal Affairs

Bombay Castle, 15th June 1949.

To

The District Magistrate, Surat,
Surat.

Subject: Filing of revision application against the order of the Magistrate convicting A/CHD BAGWAN PATEL, IAMC, 24 Fd AMB

Sir,

I have the honour to forward herewith copy of letter from the Brigadier in charge of Administration, Southern Command Poona No. 54659 A2 dated the 2nd May 1949, and to state as follows:-

It appears that A/CHD BAGWAN PATEL attempted to escape from custody and was therefore convicted under section 224 I.P.C. and sentenced to 2 months R.I. In accordance with rule 2 of the Criminal Procedure (Military Offenders) Rules framed under sub-section (1) of section 549 of the Code of Criminal Procedure, 1898, (see Criminal Manual of the High Court, 1947 pp. 53-54) the Magistrate could not proceed with the trial of A/CHD BAGWAN PATEL and convict him unless he gave five days' notice to the Commanding Officer of the accused and that the notice period had expired fro the date of the service of the notice. It appears therefore that the Magistrate who investigated the charge and convicted the accused did not act in accordance with law. Consequently the trial was illegal and the conviction and sentence can be set aside by Government by filing a revision application in the Sessions Court, Surat. (see Mandy In re I.L.R. (1946) Mad. 138 cf. sec. 435 of the Criminal Procedure Code). But before filing an application

in revision it would be necessary to consider whether the accused is in prison and if so, whether he has ~~it~~ already undergone the term of the imprisonment. If he has already undergone the term of the imprisonment it would be futile to go in revision. I am therefore to request you to file a revision application as desired by the military authorities to the proper Court if the accused has not already undergone the imprisonment.

Yours faithfully,

Sd/-

for Remembrancer of Legal Affairs.

Copy forwarded with compliments to th

Brigadier-in-charge Adm. Southern Command H.Q. Poona
H.Q. Bombay Area, Colaba.

L.D.R.I. No. 9475 dt. 22-6-1949.

Submitted.

2. In his opinion No 3291 dt. 26-3-1949, the R.L.A. had opined that the general order of the kind contemplated by H.D. proposed to be issued under section 45(1)(f) of the Code of Criminal Procedure would be ultra vires and would not be enforceable. The Secretary H.D. points out that in Delhi Province and also in U.P. and Punjab, innkeepers are required to maintain registers of ledgers under the Sarais Act, (XXII of 1867) which he presumes applies to this Province as well.

The R.L.A. is requested to advise.

3. From Section 17 of the Saraais Act of 1867 it is clear that the Act extends to the N.W.F. Province and Bengal. The latter part of the section empowers any Prov. Govt. to extend the Act to any part of the territories under its jurisdiction by a notification in the official Gazette except the towns of Calcutta, Madras and Bombay. The said Act does not seem to have been applied to this Province and consequently no action under the Act is feasible.

Incidentally it may be pointed out that the original proposal of H.D. was to pass a general order to the whole province under sec. 45(1)(f) of the Cr. P.C. directing the village headmen to maintain a register for recording the movement of strangers in or near the villages. The question was then answered in the negative by the R.L.A. As the scope of the Sarais Act is restricted to the maintenance of registers by keepers of Sarais and Puraos, the Act does not seem to be of any help in achieving the purpose in view.

As regards the maintenance of registers by the keepers of places of public entertainment of a residen-

-tial type Govt. has already decided to accept the proposal of the Inspector General of Police to amend the Rules framed under section 39-A of the Bombay District Police Act, (IV of 1890).

IA/-

22/7.

A.L.R.

Reply may be : ----

The Sarais Act, 1867 has has not been extended to the Province of Bombay.

IA/-.

22/7.

R.L.A. IA/-

22/7

U.R. to H.D. No. 8418 d. 26-7-1949.

Office of the R.L.A.

On Mr. Mahadeshar's transfer as a Hamar Deputy Collector and the Army Officer to Sangli on 18th May 1949 he could have been invested with the powers of the First Class Magistrate and the additional powers to try summarily. Since no such powers were conferred on him on that date it would not be possible for Government now to invest him with these powers retrospectively. On the question whether he could exercise these powers after 1st August 1949 attention of the Home Department is invited to R.L.A.'s opinion No. 10780, dated the 26th September 1949.

Sd/-
20/9
Remembrancer of Legal Affairs.

U.O. to H.D., No. 11465, dated the 4th October 1949.

Action of the Police.

The difficulties in the way of sustaining a prosecution successfully in this case have been aptly summarised by the Public Prosecutor, Thana., in paragraph 7 of his letter No. 35 of 1949 dated 10th January 1949 to the Divisional Forest Officer East Thana, Mu-ak. The illicit cuttings go as far back as the early part of 1945. The witnesses were examined before a Magistrate in or about 1947, and the witnesses will, therefore, be deposing to something which occurred four years ago. It is doubtful how far they will adhere to their original statements. They are men of very little education, and it is difficult to say how they will fare under cross-examination. Besides, most of them are accomplices, and the Court would naturally insist upon independent corroboration. No corroboration seems available. Even the illicit cuttings cannot be traced. In these circumstances, I share the misgivings felt by the Public Prosecutor, Thana, and I do not think there is any reasonable chance of securing a conviction.

Sd/-
15/7
Superintendent of Local Affairs.

U.O. No A.F.D. No. 1051, dated the 16th September 19...

Office of the L.A.G.

The condition can be imposed provided the prisoner accepts it. It is suggested that a time limit may be prescribed within which the prisoner should proceed to South Africa after his release from jail.

Sd/-
1/9.
Commissioner of Legal Affairs.

U.R. to H.D. No. 9969 dated the 2nd September '49.

Action of the Police.

Bombay Beggars Act 1945 - sec. 5(5).

Section 401(1) applies to the case of a person who has been sentenced to punishment for an offence. It is not clear from the record whether this particular beggar has been so sentenced. The report of the Chief Inspector of Certified Institutions shows that he is probably detained under the provisions of Section 5(5) of the Bombay Beggars Act 1945. Section 401(1) of the Code of Criminal Procedure will not apply to such detention. The only course which can be followed in such cases is to direct unconditional release under Section 22. As the person is to be handed over to his relations to be taken to Pakistan, it is unlikely that he will continue in the Province in the present state of his health. If he returns or takes to begging again, suitable action under the Act can be taken against him again.

Id/-
23/7.
Remembrancer of Legal Affairs.

U.O. to H.D., No. 8956, dated the 23rd July 1949.

Action of the R.L.A.

Bombay Paupers Act, 1945. Remission of term of detention.

R.L.A's opinion No.8956, dated the 23rd July 1949 was confined to the applicability of sub-section (1) of section 401. The view now taken by the Home Department is correct; and action under sub-section (4A) is legally feasible.

Sd/-
25/8
Remembrancer of Legal Affairs.

U.O. to H.D., No. 9698, dated the 26th August 1949.

Office of the R.L.A.

The papers show that the order for the disposal of cement passed in this case by Mr. Jadhav in his capacity of Superintending Engineer was passed bona fide in the best interests of Baroda State and without any criminal intention of violating the Control Orders. The qualifying clause in the Order viz. "that the stock should be disposed of by open auction, in a way not giving ground for any complaint" and the attempt made to dispose of the stock by open auction make it perfectly clear that not only was there no idea of blackmarketing but even the contravention of the Control Order was not contemplated by Mr. Jadhav. The man on the spot, Mr. Chitre could have easily got the necessary license from the Controller. The violation of the Control Order is thus of a technical nature. There is no case against Mr. Jadhav; and the case against Messrs. Sawant and Chitre does not deserve to be pursued further. These facts may be brought to the notice of the Civil Supplies Department of the Government of Bombay and they may be requested to withdraw the case, unless they have in their possession some other evidence against these persons.

In the meantime Mr. Jadhav and Messrs. Sawant and Chitre should be instructed to respect the summonses if any be issued by the Court, and appear before the Court in obedience thereto. It is, however, presumed that such summonses, following the usual practice, will be sent now through the Government of Bombay.

Id/-
30/8
Remembrancer of Legal Affairs.

U.R. to P.V.D. No. 9852, dated the 31st August 1949.

Office of the R.I.A.

The District Magistrate of Ahmedabad reports that one Vela Jiva of Durgi, Taluka Dholka, has lodge a complaint on 3-8-1948 against Jiva Karma and 9 others for offences under sections 447, 427 I.P.C. The complainant charges the accused of having done deliberate damage to his bajri and jowar crop to the extent of Rs.400 by granting 80 cattle in the said crop. The case has not started at all as the accused were to be extradited, and they appeared before the Court on 24-6-1949 and have been asking for ajournment for various reasons. It is not quite clear from this report whether the complaint was directly lodged by Vela Jiva in the Magistrate's Court or whether investigation in the case has been made by the Police upon a complaint and the case sent up to the Court.

If the Magistrate has taken cognisance upon a report made by the Police after investigation, it would be feasible for the Police Prosecutor in charge of the case to withdraw both the charges under the provisions of section 496(2) of the Code of Criminal Procedure.

If, however, the Court has taken cognisance upon a complaint by Vela Jiva, there will be no scope for withdrawal by the Public Prosecutor or the Police Prosecutor. Section 248 of the Code of Criminal Procedure applies where complaint is made in a summons case. Only the offence under section 447 is triable as a summons case, so that it would not be feasible even for the complainant to withdraw by recourse to section 248 the other charge under section 427 I.P.C.

Both the offences are, however, compoundable; if

and looking to the fact that damage has been caused to the crops the just course in this case would be to ask the accused to pay some compensation to the complainants and induce them to compound the offences.

Id/-

16/9

Remembrancer of Legal Affairs.

U.R. to H.D. No. 10574, dated the 19th September 1949.

Office of the R.L.A.

Prosecution of Messrs. the Western India Tanneries Ltd.

The question referred to the R.L.A. is whether the owner or the architect should be prosecuted for carrying out construction in contravention of the permission granted by the Controller of Buildings. The facts are as follows : The Western India Tanneries, Ltd., constructed a room in contravention of the permission granted by the Controller of Buildings, Bombay. The Government, in the Labour Department sanctioned prosecution of the owners. Subsequently, the owners made a representation alleging that the room in question was constructed "through oversight of the architects" and that it was "a technical omission on the part of our architects." the Secretary Labour Department, thinks that it would be more appropriate to prosecute the architect than the owner and the question has been referred to the R.L.A. for advice.

The offence committed in this case is punishable under section 9(2) of the Bombay Building (Control on Erection) Act, 1948. The relevant portion of that sub-section is as follows :

> "Where any work of erection.....is carried out in contravention of sub-section (1), the person at whose expense the work of erection is carried out and (where he is not the same person) the person undertaking the carrying out of such work and (in either case) any architect, engineer or other perso employed in an advisory or supervisory capacity in carrying out such work shall, on conviction, etc."

It appears, therefore, that the intention of the Legislature is to punish not only the owner but also the architect or engineer responsible for a unauthorised construction. In this case while the owners represent that the unauthorised construction was carried out by their architects through oversight, the architects are

HRP-

throwing the blame on their clients. In the letter addressed by the architects on 23rd May 1948, this is what the architects have represented to the Controller of Buildings :

> "We have, therefore, once again to request you to condone our clients' action in having constructed the above room. . . . . "

Under the circumstances, theappropriate course would be to prosecute both owners and the architects.

Id/-

27/10

Remembrancer of Legal Affairs.

U.R. to Labour Department No. 12064 dated the 28th October 1949.

Office of the R.L.A.

It appears from the application that the case for the offence under section 409 is still under investigation which was commenced upon a complaint lodged by the applicant. There is no provision in the Code for Government to issue instructions to discontinue a Police investigation, and as a matter of general policy it would not be advisable to issue any instructions. It will, however, be always open to the investigating Police to ask for an "A" Summary or "C" Summary from the Magistrate on the ground that the complainant does not wish to proceed with the case and is not prepared to supply evidence in support of his complaint.

Sd/-

19/10

Remembrancer of Legal Affairs.

Office of the R.L.A.

This is a case of a wife murdering her husband and disposing of the dead body with the help of her mother and others. There is prima facie evidence sufficient to place the wife Bai Kushi on her trial. We should not withdraw the case from the Courts for fear of an acquittal or even discharge. Only Bai Kushi should be proceeded against for murder. She and the rest may proceeded against for the offence under section 201. Perhaps the investigating police might like to have Bai Hira as a witness. She may be either tendered pardon or merely cited as a witness.

Id/-

12/11

Remembrancer of Legal Affairs.

U.R. to H.D. (G), No. 12895
Dated 15th November 1949.

Office of the R.L.A.

Section 248 of the Criminal Procedure Code is limited in its operation to cases instituted upon complaints, in the strict sense; and has no application where the Magistrate has taken cognizance upon a Police report. The only provision under which the case can be withdrawn is subsection 495 of the Code. Whether the case should be so withdrawn is a matter of policy for Government to decide.

Id/-

Remembrancer of Legal Affairs.

U.R. to R.D., No. 12876, dated the 14th November 1949.

Office of the H.L.A.

Question of jurisdiction of the Magistrate at Navsari in Criminal Procedure Code, section 40, States Merger (Governors Provincial) Order, 1949.

Although the entire area comprising the Navsari District of the Baroda State is included in the Surat Revenue District by P. and S.D. Notification No. 2755/46 dated the 29th July 1949, still the new judicial district of Navsari was constituted by P. and S.D. Notification No. 5198/46-F-VIII, dated the 31st July 1949 and a separate sessions division of Navsari was formed by notification No. 5198/46-F-VII, dated the 31st July 1949. Navsari originally formed part of the Baroda State and the F.C. Magistrate, Navsari, functioning in that area on 1st August 1949 would continue to exercise his powers in that area for the period for which he was originally appointed. Jalalpore villages were presumably part of the Bombay Province proper and were part of the judicial district of Surat (vide H.D. Notification No. 1072-C, dated the 23rd August 1928). Consequently the Magistrate at Navsari cannot exercise his magisterial powers in these villages unless he is reinvested with the magisterial powers under the Code of Criminal Procedure as applied to the Province of Bombay (cf. H.L.A's opinion No. 10780, dated the 26th September 1949). By H.D. Notification No. 5293/46-I-II, dated the 14th September 1949, the area comprising the Navsari District of Baroda State was included in the Xxx Local Limits of the Surat judicial district with effect from 4th October 1949 and by notification No. 5293/46-I-IV, dated the 14th September 1949 the same area formed part of the Sessions Division of Surat from the same date. Jalalpore villages were part of the Province proper and were included in the judicial district of Surat from the very beginning. An appeal from a magistrate who has jurisdiction over those villages will therefore

lie to the Sessions Judge at Surat. Appeals from the Navsari area will also lie to the same judge after 4th October 1949.

Id/-

29/10.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 12158 , dated the 31st October 1949.

Office of the Rt.A.

Section 127 of the Baroda Criminal Procedure Code provided that the Huzur was to decide what offences should be tried with the help of a Jury or with the help of Assessors. Accordingly, under Rule 89 of the Rules under the Baroda Criminal Procedure Code, offences punishable with death, transportation or with imprisonment of 10 years and upwards were made triable by Assessors and the minor offences were made triable by Jury. This system continued in force until 29-7-49. By the Baroda State (Application of Laws) Order 1949, the Code of Criminal Procedure, 1898 was made applicable to the Baroda State. Paragraph 5(1)(ii) of that Order provided that all orders, notifications, schemes, by-laws and all rules by whatever name or description called, under any enactment repealed by the provisions of sub-paragraph (i) are also hereby repealed. It follows, therefore, that Rule 89 quoted above relating to the trial by Jury and Assessors, ceased to be law from from 30-7-49.

2. Under section 268 of the Code of Criminal Procedure, 1898 all trials before the Court of Sessions shall be either by a Jury or with the aid of Assessors. Under section 269 the Provincial Government may by an Order direct that thetrial of any particular case of offences shall be by a Jury in any District. The combined effect of these two provisions is that where the Provincial Government does not make an order under section269 the trials will continue to be by Assessors. Since after the issue of the Baroda State (Application of Laws) Order, 1949, no direction was given by the Provincial Government under section 269, and the old Baroda system was superseded, all trials in the Baroda territory would be by Assessors after 29th July 1949.

3. This would naturally lead to certain anomalies Part of the Baroda territory is amalgamated with Sura District and part with Kaira District. Technically, since the Criminal Procedure Code, as applied to Baroda, has been continued by the States Merger (Governor's Provinces) Order, 1949, a notification issued under section 269 for the Surat or other districts in the Provice before the merger would not become applicable to the Baroda territories amalgamate with such districts. A decision hasalso to be taken as to whether the old Baroda system should continue in the Districts which are self-contained and comprise Baroda territories only.

4. My own view is that we should accept the High Court's proposal of continuing the Baroda system as far as possible. That would only be possible where the District does not contain any other territory. Where the Baroda territory has been amalgamated with the existing Districts, we should extend the original notification applying the practice prevailing in that district to the Baroda territory also . The result will be that the territory now comprised in the Surat District will be under the Jury System as it obtains in the Surat District; and the Baroda territory that has gone in the Kaira District will be governed by the system of Assessors. Perhaps only for the Baroda District proper it may be feasible to have a sort of jury system which obtained there before, i.e. Jury for the minor offences and Assessors for the major offences. Districts like Mehsana and Amreli are in the same state of advancement as the neighbouring districts of Kaira, Panch Mahals and Broach; and there is no reason for having a half-hearted Jury system in those districts. They might as well be governed

by the Assessor system which obtained in the other Gujarat Districts excepting Surat and Ahmedabad.

5. As regards the list of Jurors, if the above suggestions are accepted the question of retaining the list will not arise except for the Baroda District proper. Technically speaking, along with the Baroda Criminal Procedure Code, the list prepared under schedule VIII to that Code would also cease to be effective . It will be open, however, to the Sessions Juges of the District concerned to adopt the lists by following the procedure given in the Code. List of Assessors may be similarly adopted for Baroda and other Districts.

Sd/-
24/11.
Remembrancer of Legal Affairs.

U.R. to H.D. NO. 13587 dated the 26th November 1949.

R.I.No. 17743
31-10-47.

Submitted.

It appears that Mr. Jogi Morar, resident of Kolak, Pardi Taluka, Surat District and Contractor of ferry boat committed an offence of conveying an overload of passengers in his boat which upset and caused death of a passenger by name Mr. Mahmmx Mosha Talqi. He is a resident of the Indian Union and the place of offence is in Portuguese limits at Daman. The offence appeats to have been registered under Sec. 282 and 304 A.I.P.C. and the District Magistrate Surat requests Government's sanction to investigate the offence. H.D. presumably considers that what the District Magistrate wants is xxx the sanction of Government under Sec. 188 of the Criminal Procedure Code. P.& S.D. is of the view that since Consul General for India in Portuguese Possessions cannot be called a Political Agent it is not necessary to obtain his sanction and that H.D. is competent to sanction prosecution. But before this is done H.D.,has shown the p.ps. to the R.L.A. for advise.

2. Sec. 188 of the Criminal Procedure Code provides that when a British subject domiciled in India commits an offence at any place without and beyond the limits of British India, or when any British subject commits an offence in an Acceding State or tribal area, ... he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found. Provided that notwithstanding anything in any of the preceding sections of this Chapter no charge as to any such offence shall be

inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed certifies that in his opinion the charge ought to be inquired into in British India; and, where there is no Political Agent, the sanction of the Provincial Government shall be required. "Political Agent" as defined by clause (40) of Sec. 3 of the General Clauses Act, shal mean the principal officer, by whatever name called, representing the Central Government, in any Acceding State or group of Acceding States or any territory or place outside India. The consul General for India in the Portuguese Possessions is the principal officer representing the Central Government in the Portuguese territory in India. It may would therefore appear necessary to obtain a certificate from the Consul General under Sec. 188 of the Code. The decision in Jeramias 36 Cr.L.J.240 was based on its special facts and will now be applicable.

Sd/- P.S. Kadkarni.

19/11.

R.L.A. Sd/- P.M.L.

Office of the R.L.A.

Sub-section (1) of section 10 of the Criminal Procedure Code 1898, empowers the Provincial Government to appoint a District Magistrate for each district. Sub-section (1) of section 39 provides that in conferring powers under the Code the Provincial Government may by order empower persons specially by name or in virtue of their office or classes of officials generally by their official titles. In exercise of these powers the Provincial Government by G.N. in G.R.J.D. No. 2833, dated 20-4-1899, has appointed all persons then or thereafter, permanently or temporarily holding the office of Collector as defined in the Bombay Land Revenue Code, 1879, to be District Magistrates in the districts to which they may be posted for such time as they may hold the aforesaid offices. Thus as soon as a person is appointed as Collector he would also in virtue of this Notification be invested with the powers of the District Magistrate under the Code. That the South Satara District was not in existence when the Notification of 1899 was issued does not appear to affect the situation. The class of persons which is invested with the powers of the District Magistrate consists of all persons holding the office of the Collector. The view expressed at 'A' in the Home Department office note at page 12ante appears to be correct.

2. It appears however that the South Satara District was constituted by G.N., Rev. P.& S.D. No. 2755/46-F, dated 29-7-1949 with effect from 1-8-1949 and Mr. Chinmulgund was appointed retrospectively as Collector of that district by xx a notification dated 15.8.1949.

Some difficulty may arise in so far as Mr. Chinnulgund might have exercised the powers of a D.M. during the period from 1-8-1949 to 15-8-1949; for a notification cannot grant criminal powers retrospectively. However, we need not anticipate that difficulty and may deal with it if and when it arises in some concrete case.

Id/-

14/10

Remembrancer of Legal Affairs

U.R. to H.D. No. 11599 dated the 18th Oct. 1949